

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

AMANDA M. HUSTED,

Plaintiff,

-v-

5:23-CV-79

LEE SHIBLEY,

Defendant.

APPEARANCES:

OF COUNSEL:

AMANDA M. HUSTED
Plaintiff, Pro Se
141 Elmwood Avenue
Syracuse, NY 13207

DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On January 20, 2023, *pro se* plaintiff Amanda Husted (“plaintiff”) filed this civil rights action alleging her landlord prevented her from accessing certain leased property. Dkt. No. 1. Along with her complaint, plaintiff also sought leave to proceed *in forma pauperis* (“IFP Application”). Dkt. No 2.

On January 25, 2023, U.S. Magistrate Judge Andrew T. Baxter granted plaintiff’s IFP Application and advised by Report & Recommendation (“R&R”) that plaintiff’s complaint be dismissed without prejudice but without leave to

amend. Dkt. No. 4. As Judge Baxter explained, plaintiff's landlord is a private individual. *Id.* Absent some way to plausibly view his alleged misconduct as state action, plaintiff cannot pursue relief in federal court under 42 U.S.C. § 1983. *Id.* And because plaintiff's remaining claims all sounded in state law against a non-diverse party, Judge Baxter concluded that plaintiff could not invoke diversity jurisdiction, either. *Id.*

Finally, Judge Baxter determined that permitting amendment would be unproductive because there was no reason to believe that the fact scenario alleged in plaintiff's pleading; *i.e.*, a private civil dispute with her landlord, would ever give rise to a basis for jurisdiction in this forum. Dkt. No. 4.

Plaintiff has not filed objections. The time period in which to do so has expired. *See* Dkt. No. 4. Upon review for clear error, the R&R will be accepted and adopted in all respects. *See* FED. R. CIV. P. 72(b).

Therefore, it is

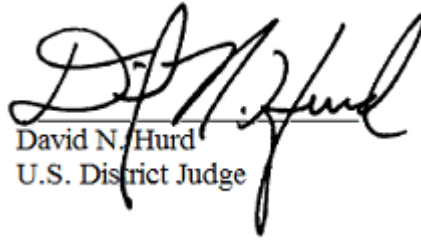
ORDERED that

1. The Report & Recommendation is ACCEPTED; and
2. Plaintiff's complaint is DISMISSED without prejudice and without leave to amend.

The Clerk of the Court is directed to terminate the pending motion and enter a judgment accordingly.

IT IS SO ORDERED.

Dated: February 14, 2023
Utica, New York.



David N. Hurd
U.S. District Judge